

**Executive Summary – Enforcement Matter – Case No. 43384**  
**Raymond Wietzikoski dba Raymonds Shell**  
**RN101676377**  
**Docket No. 2012-0191-PST-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

Raymonds Shell, 401 South Ellis Street, Groesbeck, Limestone County

**Type of Operation:**

Convenience store with retail sales of gasoline

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** July 27, 2012

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$10,992

**Amount Deferred for Expedited Settlement:** \$2,198

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$8,794

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 43384**  
**Raymond Wietzikoski dba Raymonds Shell**  
**RN101676377**  
**Docket No. 2012-0191-PST-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** January 24, 2011

**Date(s) of NOE(s):** January 10, 2012

***Violation Information***

1. Failed to renew a previously issued underground storage tanks (“UST”) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired in October 2007 and was not renewed until February 7, 2011 [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].
2. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, 15 fuel deliveries were accepted without a valid delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].
3. Failed to provide proper release detection for the piping associated with the UST system. Specifically, the annual line leak detector test had not been conducted [30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

The Respondent has implemented the following corrective measures at the Facility:

- a. On February 7, 2011, obtained a valid delivery certificate from the TCEQ; and
- b. On February 14, 2011, conducted the annual line leak detector test with passing results.

**Technical Requirements:**

N/A

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

**Executive Summary – Enforcement Matter – Case No. 43384**  
**Raymond Wietzikoski dba Raymonds Shell**  
**RN101676377**  
**Docket No. 2012-0191-PST-E**

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Nadia Hameed, Enforcement Division,  
Enforcement Team 5, MC R-12, (713) 767-3629; Debra Barber, Enforcement Division,  
MC 219, (512) 239-0412.

**TCEQ SEP Coordinator:** N/A

**Respondent:** Raymond Wietzikoski, Owner, Raymonds Shell, 401 South Ellis Street,  
Groesbeck, Texas 76642

**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	17-Jan-2012	<b>Screening</b>	19-Jan-2012	<b>EPA Due</b>	
	<b>PCW</b>	8-Feb-2012				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Raymond Wietzikoski dba Raymonds Shell		
<b>Reg. Ent. Ref. No.</b>	RN101676377		
<b>Facility/Site Region</b>	9-Waco	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	43384	<b>No. of Violations</b>	3
<b>Docket No.</b>	2012-0191-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Nadia Hameed
		<b>EC's Team</b>	Enforcement Team 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$14,000**

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **0.0%** Enhancement **Subtotals 2, 3, & 7** **\$0**

Notes: No adjustment for compliance history.

**Culpability** **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** **\$3,500**

**Economic Benefit** **0.0%** Enhancement\* **Subtotal 6** **\$0**

Total EB Amounts \$492  
Approx. Cost of Compliance \$518  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$10,500**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **4.7%** **Adjustment** **\$492**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to recover avoided cost of compliance for violation nos. 1 and 3.

**Final Penalty Amount** **\$10,992**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$10,992**

**DEFERRAL** **20.0%** Reduction **Adjustment** **-\$2,198**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$8,794**

Screening Date 19-Jan-2012

Docket No. 2012-0191-PST-E

PCW

Respondent Raymond Wietzikoski dba Raymonds Shell

Policy Revision 2 (September 2002)

Case ID No. 43384

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101676377

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Nadia Hameed

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No adjustment for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

Screening Date 19-Jan-2012

Docket No. 2012-0191-PST-E

PCW

Respondent Raymond Wietzikoski dba Raymonds Shell

Policy Revision 2 (September 2002)

Case ID No. 43384

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101676377

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Nadia Hameed

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)

Violation Description

Failed to renew a previously issued underground storage tank ("UST") delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date, as documented during an investigation conducted on January 24, 2011. Specifically, the delivery certificate expired in October 2007 and was not renewed until February 7, 2011.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 4

1195 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	x
	single event	

Violation Base Penalty \$4,000

Four annual events are recommended for the missed years.

## Good Faith Efforts to Comply

25.0% Reduction

\$1,000

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes

The Respondent completed the corrective actions on February 7, 2011, prior to the January 10, 2012 NOE.

Violation Subtotal \$3,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$362

Violation Final Penalty Total \$3,141

This violation Final Assessed Penalty (adjusted for limits) \$3,141

## Economic Benefit Worksheet

**Respondent** Raymond Wietzikoski dba Raymonds Shell  
**Case ID No.** 43384  
**Reg. Ent. Reference No.** RN101676377  
**Media** Petroleum Storage Tank  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	24-Jan-2011	7-Feb-2011	0.04	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a current TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form. The Date Required is the date of the investigation. The Final Date is the date that a delivery certificate was obtained.

### Avoided Costs

#### ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)	\$300	31-Oct-2007	24-Jan-2011	4.15	\$62	\$300	\$362

Notes for AVOIDED costs

Estimated avoided cost (\$100 per full year) to obtain a TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form. Date required is the date by which the certificate should have been obtained. Final date is the investigation date.

Approx. Cost of Compliance

\$400

**TOTAL**

\$362



Screening Date 19-Jan-2012

Docket No. 2012-0191-PST-E

PCW

Respondent Raymond Wietzikoski dba Raymonds Shell

Policy Revision 2 (September 2002)

Case ID No. 43384

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101676377

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Nadia Hameed

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)

Violation Description

Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, as documented during an investigation conducted on January 24, 2011. Specifically, 15 fuel deliveries were accepted without a valid delivery certificate.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to an insignificant amount of pollutants which would not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,500

\$500

## Violation Events

Number of Violation Events 15

15 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$7,500

Fifteen single events are recommended for the 15 deliveries.

## Good Faith Efforts to Comply

25.0% Reduction

\$1,875

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes

The Respondent completed the corrective actions on February 7, 2011, prior to the January 10, 2012 NOE.

Violation Subtotal \$5,625

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$5,889

This violation Final Assessed Penalty (adjusted for limits) \$5,889

# Economic Benefit Worksheet

**Respondent** Raymond Wietzikoski dba Raymonds Shell  
**Case ID No.** 43384  
**Reg. Ent. Reference No.** RN101676377  
**Media** Petroleum Storage Tank  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic Benefit ("EB") for Violation No. 2 is included in the EB for Violation No. 1.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

Screening Date 19-Jan-2012

Docket No. 2012-0191-PST-E

PCW

Respondent Raymond Wietzikoski dba Raymonds Shell

Policy Revision 2 (September 2002)

Case ID No. 43384

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101676377

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Nadia Hameed

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.50(b)(2) and Tex. Water Code § 26.3475(a)

Violation Description

Failed to provide proper release detection for the piping associated with the UST system. Specifically, the annual line leak detector test had not been conducted.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 1

365 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$2,500

One annual event is recommended for the 12 month period preceding the January 24, 2011 investigation date.

## Good Faith Efforts to Comply

25.0% Reduction

\$625

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	x
N/A	(mark with x)

Notes

The Respondent completed the corrective actions on February 14, 2011, prior to the January 10, 2012 NOE.

Violation Subtotal \$1,875

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$130

Violation Final Penalty Total \$1,963

This violation Final Assessed Penalty (adjusted for limits) \$1,963

# Economic Benefit Worksheet

**Respondent** Raymond Wietzikoski dba Raymonds Shell  
**Case ID No.** 43384  
**Req. Ent. Reference No.** RN101676377  
**Media** Petroleum Storage Tank  
**Violation No.** 3

**Percent Interest** 5.0  
**Years of Depreciation** 15

**Item Cost** **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**  
**Item Description** No commas or \$

## Delayed Costs

Equipment			0.00	\$0	\$0	\$0
Buildings			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0
Engineering/construction			0.00	\$0	\$0	\$0
Land			0.00	\$0	n/a	\$0
Record Keeping System			0.00	\$0	n/a	\$0
Training/Sampling			0.00	\$0	n/a	\$0
Remediation/Disposal			0.00	\$0	n/a	\$0
Permit Costs			0.00	\$0	n/a	\$0
Other (as needed)			0.00	\$0	n/a	\$0

Notes for DELAYED costs

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$118	24-Jan-2010	14-Feb-2011	1.98	\$12	\$118	\$130
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for failing to conduct annual leak detection tests on the USTs. The Date Required is one year prior to the date of the investigation. The Final Date is the date of compliance.

Approx. Cost of Compliance

\$118

**TOTAL**

\$130

## Compliance History

Customer/Respondent/Owner-Operator:	CN600905392    WIETZIKOSKI, RAYMOND	Classification:	Rating: 1.33
		AVERAGE	
Regulated Entity:	RN101676377    RAYMONDS SHELL	Classification: AVERAGE	Site Rating: 1.33
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	1888
Location:	401 S ELLIS ST, GROESBECK, TX, 76642		
TCEQ Region:	REGION 09 - WACO		
Date Compliance History Prepared:	January 23, 2012		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	January 23, 2007 to January 23, 2012		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Nadia Hameed	Phone:	713-767-3629

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period?    YES
2. Has there been a (known) change in ownership/operator of the site during the compliance period?    NO
3. If YES, who is the current owner/operator?    N/A
4. If YES, who was/were the prior owner(s)/operator(s)?    N/A
5. If YES, when did the change(s) in owner or operator occur?    N/A
6. Rating Date: 9/1/2011    Repeat Violator:    NO

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
N/A
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



<b>IN THE MATTER OF AN</b>	<b>§</b>	<b>BEFORE THE</b>
<b>ENFORCEMENT ACTION</b>	<b>§</b>	
<b>CONCERNING</b>	<b>§</b>	
<b>RAYMOND WIETZIKOSKI DBA</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>RAYMONDS SHELL</b>	<b>§</b>	
<b>RN101676377</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

## **AGREED ORDER DOCKET NO. 2012-0191-PST-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Raymond Wietzikoski dba Raymonds Shell ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 401 South Ellis Street in Groesbeck, Limestone County, Texas (the "Facility").
2. The Respondent's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about January 15, 2012.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Ten Thousand Nine Hundred Ninety-Two Dollars (\$10,992) is assessed by the Commission in settlement of the violations alleged in

Section II ("Allegations"). The Respondent has paid Eight Thousand Seven Hundred Ninety-Four Dollars (\$8,794) of the administrative penalty and Two Thousand One Hundred Ninety-Eight Dollars (\$2,198) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
  - a. On February 7, 2011, obtained a valid delivery certificate from the TCEQ; and
  - b. On February 14, 2011, conducted the annual line leak detector test with passing results.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), as documented during an investigation conducted on January 24, 2011. Specifically, the delivery certificate expired in October 2007 and was not renewed until February 7, 2011.
2. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, in violation of 30 TEX.



ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), as documented during an investigation conducted on January 24, 2011. Specifically, 15 fuel deliveries were accepted without a valid delivery certificate.

3. Failed to provide proper release detection for the piping associated with the UST system, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on January 24, 2011. Specifically, the annual line leak detector test had not been conducted.

### **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Raymond Wietzikoski dba Raymonds Shell, Docket No. 2012-0191-PST-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and

accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

Raymond Wietzikoski  
For the Executive Director

8/10/12  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Raymond Wietzikoski  
Signature

5-21-12  
Date

Raymond Wietzikoski  
Name (Printed or typed)  
Authorized Representative of  
Raymond Wietzikoski dba Raymonds Shell

Owner  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.